IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5465 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE ANANT S.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DASHRATHBHAI CHANDUBHAI CHUAHAN - Petitioner(s)
Versus
DY EXECUTIVE ENGINEER & 2 - Respondent(s)

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Appearance :
MR MEHUL S SHAH for Petitioner(s) : 1,MR SURESH M SHAH for Petitioner(s) : 1,
MR DIPAN DESAI, LD. AGP for Respondent(s) : 1 - 2.
NOTICE SERVED for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE ANANT S.DAVE

Date : 03/11/2006

ORAL JUDGMENT

1. Heard the learned advocates for the parties.

2. This petition, under Article 226 of the Constitution of India, is filed by the workman, with a prayer to quash and set aside the award at Annexure-'D' to the petition passed by the learned Presiding Officer of Labour Court, Ahmedabad on 07.04.1997 being Reference (LCA) No.672 of 1991.

3. By the above award, the reference of the workman was partly allowed and the respondents were directed to pay lump sum of Rs.5000/- towards the services rendered by the workman intermittently for the period of eight years and no order was passed with regard to reinstatement or backwages.

4. It is the case of the workman that he was an employee as a daily rated workman since 1982 and was serving in the Irrigation Department in the office of Deputy Executive Engineer, Bavla, Irrigation (Sub-division), Bavla, Dholka Taluka, Ahmedabad district. It is his further case that he was assigned duties of distribution of water from the

canal and though work was available, he was not made permanent. According to workman, his services came to be terminated by the respondent with effect from 04.02.1990 in violation of Section 25(f), 25(e) and 25(h) of the Industrial Disputes Act, 1947. He has further raised grievance that other workmen junior to him serving with the respondent were continued and the petitioner was discharged from services.

5. Initially, the learned Presiding Officer, Labour Court, Ahmedabad by an ex-parte order dated 26.03.1996, allowed an application of the workman and directed the respondent authority to reinstate the workman at original place alongwith back-wages. Thereafter, Misc.Application for restoration was filed by the respondents and the matter was ordered to be heard on merit where evidence was led. The above Reference (LCA) No.672 of 1991 is the subject matter of challenge in this petition.

6. Upon a statement of claim, the respondent authority vide Exh.18 filed its reply and in detail submitted about number of days on which the workman had served with respondent authority intermittently according to muster-roll and statement was produced for respective years on record. Thus, according to the respondent the workman has not completed 240 days in any of the given year much less the preceding year of his termination of service. The respondent has further denied that the action of the authority was vitiated due to ill will, mala-fide or arbitrariness and further denied that workman was not entitled to receive the claim as per the statement of demand. The petitioner submitted certain documents vide Exh.11 and the facts about appointment of the petitioner with the respondent authority and affidavit was filed by the workman vide Exh.12 and thereafter the evidence was closed. Sofar as respondent is concerned, only one witness came to be examined vide

Exh.20 and thereafter their evidence was also closed.

7. Having heard the concerned parties, their advocates and evidence on record, the Labour Court arrived at a conclusion that the workman had not completed 240 days in any of the given year much less in previous year of termination. It is further held that the workman has failed to bring sufficient materials which could indicate completion of 240 days by the workman. Not only that, but, in the cross-examination, the workman had deposed that he possessed the evidence with regard to completion of 240 days but at the same time he is not in a position to submit it before the court and for the grievance about performance of the duties beyond the prescribed hours about over time, he had deposed that at any point of time any completion was made or any grievance was ventilated before the authority.

Having considered the above aspect, the

labour court found that 240 days as required under the law, were not completed by the workman, as required under law.

Sofar as, Exh.24 is concerned, a bare perusal indicates that the workman has not completed 240 days in a given year and maximum numbers of days for which the petitioner workman had served, the respondent is in the year 1984-85 and it is 200 days. If the above exhibit is perused which is again reproduced before this Court by filing affidavit in reply by the respondent authority, the preceding year of the termination i.e. 01st January, 1989 till the date of termination of service i.e. 13.04.1999 at the most number of days on which the petitioner had served the respondent authority do not exceed 100 days. Therefore, it is clear that at no point of time, the petitioner has completed 240 days as required under the Act.

8. Shri Mehul S. Shah, learned advocate appearing for the petitioner-workman contended that the petitioner workman has discharged the onus of evidence prima-facie in nature about completion of 240 days by deposing before the Labour Court and filing an affidavit in this regard. According to Shri Mehul Shah, the muster roll at Exh.24 is not reflecting correct version about completion of number of days completed by the workman and on the contrary date reflected in the 5th column of the above muster roll indicate certain anomalies about payment of wages, that is much prior to the completion of number of days on which the workman had actually performed the duty. In view of the above, learned advocate appearing for the petitioner the findings of the labour court are not based on appreciation of evidence in its correct perspective and required to be interfered. He has further relied on decision of this Court reported in **47 (1) GLR** in the case of **State of Gujarat Vs. Karshanbhai**

Jeshang and submitted that initial burden is on workman but when workman establishes that fact by oral evidence, the burden shifts on the employer. In the present case, according to him, by filing affidavit in reply, the workman has discharged initial burden about completion of 240 days of his services and therefore, after Exh.24 produced before the labour Court, the findings of the labour Court do not inspire any confidence, and therefore, the award passed requires to be set right by quashing and setting aside the same.

9. *Per Contra,* I have heard Shri Dipan Desai, learned AGP and he has submitted that powers of this Court under Articles 226 and 227 of the Constitution of India are circumscribed inasmuch as in the present case, the labour Court has correctly relied upon muster roll produced by the department which was not disputed at any moment till the evidence came to be closed and therefore also that minor discrepancy about date of payment to the

workman in 5th column of muster roll cannot be made basis to upset the above findings unless the same are perverse. He has further relied on two decisions of the Apex Court reported in **(2004) 8 SCC 195** in the case of **Municipal Corporation Faridabad Vs. Shrinivash** and submitted that the workman is supposed to show that he has worked continuously for 240 days in the preceding one year prior to his alleged retrenchment. He has further relied on another decision reported in **(2004) 8 SCC 246** in the case of **M.P. Electricity Board Vs. Hariram** and submitted that burden of proof of completion of 240 days of service is on workman. He has further submitted that in case no evidence is available, workman is to make proper application before the labour Court for production of necessary documents. Thus, he has submitted that the findings of the labour Court about service of the workman is discontinuous and intermittent do not require any interference by this Court in exercise of powers under Article 226 and 227

of the Constitution of India.

10. Having heard the learned advocates appearing for the parties, I am of the opinion that as no error of fact much less of law is committed by the labour Court, inasmuch as the labour Court has rightly appreciated the documentary evidence at Exh.24 an extract of muster roll and found that the petitioner workman has not completed 240 days. That above extract of muster roll produced by the department clearly indicates that preceding year of retrenchment i.e. 1988-89, the workman has failed to show completion of 240 days of continuous service. That following extracts of muster roll for the year 1988-1989 reveal non-completion of 240 days by the workman in the previous year of termination of his service.

From 14.04.1988 to 27.07.1988

Sr. Nos	Period of Muster roll	Days of Presence	Voucher Nos.	Date of Payment
1.	29.7.88 to 26.8.88	7	41	1.9.88

2.	27.8.88 to 15.9.88	30	62	3.10.88
3.	26.09.88 to 25.10.88	30	54	3.11.88
4.	26.10.88 to 24.11.88	13	46	3.12.88
5.	25.12.88 to 23.1.89	24	14	4.2.89
6.	24.1.89 to 23.2.89	23	60	7.3.89
7.	25.2.89 to 20.3.89	4	96	31.3.89
8.	21.3.89 to 30.3.89	9	95	-
9.	1.4.89 to 13.4.89	13	5	25.5.89
		153		

Sr. Nos.	Period of Muster roll	Days of presence	Voucher Nos.	Date of payment
1.	14.4.89 to 18.6.89	-	-	-
2.	19.6.89 to 3.7.89	6	88	25.5.89
3.	3.9.89 to 2.10.89	19	103	15.10.89
4.	3.10.89 to 1.11.89	12	151	30.11.89
5.	1.12.89 to 13.4.90	-		
		37		

Even in his deposition the workman had admitted about inability on his part to produce any evidence with regard to completion of 240 days.

So far as, reliance placed by learned advocate Shri Mehul Shah upon decision

reported in **2006 (1) GLR 695** in the case of **State of Gujarat Vs. Karsanbhai Jesang** is concerned, it was a case when claim of workman was not controverted by an employer by filing written statement, but, in the present case, the written statement was filed before the labour court, not only that but evidence in the nature of extract of muster roll was produced vide Exh.24 and I therefore do not see any reason to take support from the above reported decision relied on by the learned advocate Mr.Mehul Shah. I do not find any reason, much less justifiable to exercise extraordinary jurisdiction under Article 226 of the Constitution of India to upset the findings of the Labour Court, arrived on the basis of proper appreciation of evidence and applicability of law on facts of the case and therefore the award impugned in this petition do not need any interference by this Court.

11.In view of the above, there is no violation

of Section 25 (f), 25(g), 25(h) and 25(t) of the Industrial Disputes Act, 1947 and award passed by the learned Labour Court is in accordance with law. The petition fails and stands rejected. Rule is discharged.

(ANANT S. DAVE, J.)

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